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MOVEMENT FOR A NON-PARTISAN JUDICIARY.

This Journal has given considerable notice in recent issues (76 Cent. L. J. 91, 127) to the selection of a non-partisan judiciary, and to the establishment of courts for the recall of judges as supplementary to tribunals for impeachment (76 Cent. L. J. 163).

It has felt there was great need for this in the face of the movement for recall through popular vote, which method we conceived to have nothing more of merit in it than as evidencing deep dissatisfaction with the alleged inefficiency of our courts. We thought the best thing to do was to obtain, if possible, judges free from political influences, and, then, to provide, if removal was sought, a readily available tribunal, where responsible charges might be heard, with ample opportunity given for defense.

We are pleased to announce that two states are proposing by proper legislation to obtain such courts of removal, and four states have statutes for non-partisan selection of judges, these being Ohio, Washington, Kansas and Missouri. This last state enacted such a law since we began to urge such selection, a special edition of our Journal largely devoted to this movement being mailed to members of the Missouri Legislature.

We wish to invite our subscribers' attention to a sentiment that is universal and the practical steps taken toward giving it statutory force. Especially do we suggest attention to the Missouri statute as applicable to large cities. Each judge of many has an electorate much more numerous than in less congested communities where the ordinary primary might not entirely eliminate party influence. The idea of a non-partisan judiciary is the thing; the details for obtaining it greatly may differ. No. 8 of our Vol. 76 publishes this statute and that enacted in Kansas.

THE CARMACK AMENDMENT SETTLING THE RULE OF LIMITATION OF LIABILITY IN RELEASE SHIPMENTS.

The case of Adams Express Company v. Croninger, 33 Sup. Ct. 148, notes the conflict in state decision as to validity *vel non* of limitation of value in consideration of a reduced freight rate. The case at bar was by writ of error to a Kentucky court, in which state the law is that such limitation is invalid and judgment had been rendered for the full value of an interstate shipment, an amount in excess of the value at which a lower rate was paid.

The opinion says: "It has become an established rule of the common law, as declared by this court in many cases, that a common carrier may by a fair, open, just and reasonable agreement, limit the amount recoverable by a shipper in case of loss or damage to an agreed value, made for the purpose of obtaining the lower of two or more rates of charges proportioned to the amount of the risk." For this are cited a great many decisions of the court.

The question then was, first, whether the Carmack Amendment took entire possession of the subject of the liability of an interstate carrier under a bill of lading, and, secondly, whether this possession excluded state ruling upon limitation of liability in the matter of released rates. Stating the latter question differently, the question was whether this variance in state ruling shows any substantial interference with the operation of the Amendment regarding the liability of such a carrier under its bill of lading.

As to the first question, the court says of the Amendment that: "It embraces the subject of the liability of the carrier under a bill of lading which he must issue, and limits his power to exempt himself by rule, regulation or contract. Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject, and supersede all state regula-

tion with reference to it." We are disposed to think just here, that, if there was so much detail, then the rule *expressio unius exclusio alterius* should apply and, therefore, the Amendment forbids any limitation of liability in maximum valuation in consideration of a reduced rate; but this case held that the Kentucky court was in error in holding the limitation of value was invalid and that the rule of the common law to which we have adverted should have been applied.

As to the second question, the court adopts the view expressed by Georgia Court of Appeals in Southern P. Co. v. Crenshaw Bros., 5 Ga. App. 675, 63 S. E. 865, that there was a diversity not only between different state courts, but also between federal courts and the courts of states in which they sat, which was intended to be allayed, saying that: "It is practically impossible for a shipper engaged in a business that extended beyond the confines of his own state, or a carrier whose lines were extensive, to know without considerable investigation and trouble, and even then oftentimes with but little certainty, what would be the carrier's actual responsibility as to goods delivered to it for transportation from one state to another."

This seems to us little more than *argumentum ab inconvenienti*, but, perhaps, legitimate, under many judicial expressions which aim at application of interstate commerce regulations in a practical, rather than in a scientific, way. Ordinarily it is considered that the difficulty of ascertaining what is the law regarding a course of action concerns in no way the legal consequences thereof. In essence there would seem to be no difference between the alternative of a higher rate upon actual value and a lower rate upon agreed value, as, if either is higher or lower than it should be, it is an unfair rate. Such a rate is not demandable by a shipper nor imposable on a carrier. The alternatives must be fairly correspondent or they have no right to exist.

What then, as a matter of law, is there, for the claim of harmful diversity? Nothing, we think, so far as variance in state rulings is concerned, for the place of the contract determines the law governing it. Where that law invalidates provision for limitation of liability, it merely abrogates the existence of a co-equal alternative, and that would seem *damnum absque injuria*. If a carrier wishes to avail himself of lower liability upon a reduced rate in such a state, upon a chance to have his controversy upon a loss get into a federal court, that is his affair. The Amendment does not consider the residence of carriers and there is scarcely any reason for decision to say that it does.

It is evident that, if this case had sustained the Kentucky ruling, there would be equal certainty as to all shipments, and, additionally, it would bring absolute uniformity in rates, instead of having two, three or more rates, because liability may be limited. However, it may be thought excellent that the question has been settled, it must be considered, we think, that the reasoning is rather based on utilitarian, than logical, considerations.

NOTES OF IMPORTANT DECISIONS

MAINTENANCE—MASTER CARRYING ON SUIT IN BEHALF OF HIS SERVANT.—Alabama Court of Appeals discusses what it said was the greater strictness of the common law in the imposing of penalties on intermeddlers in lawsuits than is the law of to-day. But wherein such intermeddling is by the law of to-day abated from is not pointed out. Louisville & N. R. Co. v. Stephenson, 60 S. E. 490.

Indeed the entire discussion in the case is on the view that intermeddling amounting to maintenance is still prohibited, but there is an exception in behalf of a master when the suit arises out of some act done by the servant in the course of his service.

It seems useful in this day of lawsuits against patrons of indemnity companies to state what the Alabama court says was the common law about "intermeddlers in lawsuits." It quotes from Hawkins' Pleas, p. 455: "It seems clear that whosoever assists another with money to carry on his cause, as by retaining one to be of counsel for him, or otherwise bearing him out in the whole or part of the expense of the suit may be properly said to be guilty of an act of maintenance. * * * It is laid down as a fundamental authority that maintenance is not malum prohibitum, but malum in se; that parties shall not by their countenance aid the prosecution of suits of any kind, which every person must bring upon his own bottom and at his own expense. There is a justifiable maintenance arising from the privity of the parties in estate, or from their connection as master and servant."

Literally these excerpts refer to suits instituted and aid in their being carried on is what is denounced by one not sustaining some relation preventing his being an intermeddler, but the spirit of the prohibition was against litigiousness—lawsuits being brought or defended except upon a party's "own bottom and at his own expense." This is clear from a further excerpt from Hawkins that: "All persons may be called maintainers, who give or but endeavor to give any other kind of assistance to either of the parties in the management of the suit depending between them."

Common law days knew nothing, probably, of indemnities against lawsuits, through a mode of insurance, but it was forbidden that another could project his personality into a lawsuit for the purpose of keeping it or one side of it on foot. In other words, according to the letter of the common law prohibition, one could not engage himself to assist a litigant, and, of course, he ought not to be allowed, as a condition of saving the litigant from all liability and expense, to take over a cause of action or a defense. In a word, if a party is not conducting his own action or his own defense "at his own bottom and at his own expense," then there is a failure of the action or the defense. If the Alabama court does not mean exactly this, we do not understand its reasoning.

POOLING ARGREEMENTS AMONG STOCKHOLDERS.

In this highly commercial age, so much of the business of the world is done through the agency of corporations and so many people are stockholders in these institutions, that few legal questions are of more interest to a greater number of persons than those relating to ownership of stock and corporate control by stockholders. While it is true that the control of corporations is directly in the hands of the directors, free from dictation and interference by the stockholders, still it rests primarily with the stockholders to determine who shall be directors and by this means to control the policy of the corporation, electing to the directorate those who stand for a majority of the owners or stockholders. For, however distinct may be the corporation from the stockholders who compose it, they are the parties most directly interested in its affairs. They have furnished the funds for its working capital, are entitled to whatever dividends are declared from its profits, or sustain to the extent of the capital invested whatever loss may come from its reverses and upon its dissolution, succeed to all its property.

Since the principle of majority control applies to corporate affairs and majorities are determined by shares of stock and not by stockholders, the control of a majority of the stock by means other than the absolute ownership thereof, is of vital importance.

The subject of voting trusts within a single corporation has not received from the courts as much attention as have those agreements for the combination of different corporations and partnerships engaged in the same business. The two agreements have little similarity, are for purposes entirely different and are not governed by the same rules of law. In the one case, the combination of stockholders looks to the control of a single corporation and the influence of the combination is not felt out-

side of the corporation itself; in the other, the combination is of competing institutions and has the power, if not the immediate purpose, of increasing the price of the commodity produced, and the influence of this latter form of combination is felt outside the corporations directly interested and by reason of the fact that it does so affect the public has been held to be against public policy and void as a contract. This is so, whether the object of the combination is to increase the price of the commodity produced or is a perfectly lawful object. In the voting trust of stockholders within a single corporation, however, there is no combination which in itself is against public policy or which violates any law inasmuch as the object of each combination is the question which determines its validity.

The power of control by a bare majority of stock is a matter of grave importance, for it can be used to the corporation's or minority stockholder's detriment as well as good. So long as the element in control keeps within the law of corporations, there is no way by which the minority can interfere to prevent what may seem extravagant or destructive methods. Thus, the profits may be entirely absorbed by the salaries of officers and directors, all of whom may be from among the majority stockholders, by this means making valuable the majority stock and tending to make the minority stock a drug on the market, or if not so absorbed, the profits may, at the dictate of the majority, all of whom may be receiving munificent salaries, be invested in enlarging the business without declaring dividends. Numerous methods may be adopted strictly within the law, whereby the capital of the minority stockholders is made profitable only to those in control; or, if the majority should overstep the bounds and in withholding from the minority stockholders what is justly theirs, make it possible for a minority stockholder to bring suit, his relief is so meagre as to render his action almost absurd. Theoretically, the loss is not that of the minority stockholder, but that of the corporation, and the right of action belongs to it and not to him. Since it is under the control of the wrong-doers, they naturally will not permit suit to be instituted in its name. By showing these facts, the minority stockholder may sue in his own name, but even though he should win after tedious and annoying litigation, the amount recovered inures not to him but to the corporation and must be covered into the treasury to be again used by those in control of the corporation.

I am dealing in possibilities, to be sure, but the fact that the power resting in the majority is seldom indulged in to the detriment of the corporation or of the minority, does not in any way affect the situation. I believe that, as a rule, those who are placed in control of corporate affairs act for the best interests of all concerned and faithfully execute the trust imposed in them, and it is true that the power they hold is sometimes important for the purpose of excluding from the directorate those who would wreck the institution for private gain, but in dealing with this matter, the law cannot look only to the general custom and the general business methods pursued, but must look at the matter from a standpoint of how far it is possible for those in a corporation to go, regardless of how far they actually do go.

Because of the importance of majority control, many schemes have been devised by ingenious lawyers to organize a voting pool among the stockholders to temporarily or permanently control the affairs of the corporation. That such contracts should get into the courts and be passed upon by them is but natural when the objects of the pool are considered and the pressure which would be brought to bear by those not in the pool, to break them. Large inducements would be offered to some member of the combination to withdraw his stock, thereby shifting the control of the corporation, and it must be evident that to the stockholders forming the pool, the prime

object is to devise some method whereby the combination cannot be overthrown by any of the parties to it, some method by which the combination will remain intact for the period agreed upon. In short, the most important question touching this whole matter is, can a voting trust be so formed by a majority of the shareholders that its continued existence may be relied upon by those who enter it; or, do the dangers of illegality, voidability and liability to breach by some of its members attach to all such combinations? In examining the different kinds of voting trusts which have been passed upon by the courts, I have divided the agreements into three classes, viz., void, voidable and valid.

In those agreements which the courts have held void, the point upon which most of the decisions seems to have hinged has been the object which governed the stockholders in forming the combination, or rather the object to be accomplished by its formation. Certain courts have injected the element of consideration into these contracts, when examining into them, but I do not believe that in a last analysis, the consideration for a pooling agreement has any effect whatever upon its validity.

In the case of Cone v. Russell,[1] a pooling agreement had been entered into among stockholders whereby it was agreed that one of the parties should be employed for a specified period at a fixed salary as general manager of the corporation. The court held the agreement void and based its ruling on the proposition that, "the propriety of the object validates the means and must affirmatively appear."

This theory seems to be predicated somewhat on the proposition that each stockholder stands in a fiduciary relation to every other stockholder insofar as the use of his independent judgment on all matters where the stockholders have a vote is concerned. The principle of a fiduciary relationship may not appeal to all the courts but if it is the object of the pooling agreement which is to govern the courts in passing on its validity, then the fiduciary relationship invoked by the New Jersey court is the only ground on which the ruling can be based. So, contracts made with another corporation to hold and vote the stock, where such power is ultra vires the holding corporation, have been held void.[2] And where the contract amounts simply to an agreement by a stockholder to sell or barter away his right to vote, the courts are somewhat in conflict as to whether it is void or merely voidable. The better authority seems to incline toward holding the contract void, and among the courts so holding is the United States Supreme Court, which said in West v. Camden,[3] which was a case wherein a pooling agreement had been entered into for the purpose of employing the complainant in a substantial position with a fixed salary for a term of years:

"It was a contract, the purpose and effect of which was to influence the defendant, as a stockholder and officer of the company, in the decision of a question affecting the private rights of others, by consideration foreign to those rights, and the defendant, by the contract, was placed under direct and very powerful inducement to disregard his duties to other members of the corporation, who had a right to demand his disinterested action in the selection of suitable officers. He was in a relation of trust and confidence, which would require him to look only to the best interests of the whole, uninfluenced by private contracts. We think this salutary rule is applicable in this case, notwithstanding the alleged contract was not corruptly made for private gain on the part of the defendant. There were other stockholders in the company. The defendant and the Standard Oil company for whose benefit it is alleged the contract was made, were not all the stockholders and it seems to us that it was certainly the right of those other stockholders to have the defendant's judgment, as an officer of the company, exer-

(1) 48 N. J. Eq. 208; 21 Atl. 847.

(2) Hafer v. Ry. Co., 14 Weekly Law Bul., Ohio, 68.

(3) 135 U. S. 507, 10 Sup. Ct. 838, 34 L. Ed. 254.

cised with a sole regard to the interests of the company."

Despite whatever name the courts may apply to the relation existing between one stockholder and another, it would seem that to a certain extent the same theory applies which applies in the case of the sale by a citizen of his vote at a municipal election or the sale by a director of his vote in a directors' meeting. The analogy could probably not be carried to the full extent to which it is carried in the case of popular elections but certain elements in the two cases are similar. There are many other cases which hold that any contract is void in which the voting power of the shareholder is separated from the title to the stock.

In Bostwick v. Chapman and Starbuck v. Trust Co.,[4] known as the Shepaug Voting Trust cases, a voting trust was held illegal as against public policy. Therein a large majority of the stock of a corporation was standing in the name of a trustee in pursuance of an agreement entered into by the original owners of the stock to the effect that the trustee should vote upon it for a period of five years as directed by a certain committee of three. Trust certificates were issued which were negotiable and in the course of time a majority of these certificates came into the hands of the complainants. Upon a bill in equity filed by them, the trustee was enjoined from voting the stock except as directed by the complainants, and by the decree it was ordered that the stock should be distributed by the trustee to the holder of the trust certificates. In the course of the opinion, the court said:

"It is the policy of our law that an untrammeled power to vote shall be incident to the ownership of the stock, and a contract by which the real owner's power is hampered by a provision therein that he shall vote just as somebody else dictates is objectionable. I think it against the policy of our law for a stockholder to contract that his stock shall be voted just as someone else who has no beneficial interest or title in or to the stock directs, saving to himself simply the title, the right to dividends, and perhaps the right to cast the vote directed, willing or unwilling, whether it be for his interest, for the interest of other stockholders, or for the interest of the corporation or otherwise. This I conceive to be against the policy of the law, whether the power so to vote be for five years or for all time. It is the policy of our law that ownership of stock shall control the management of the corporation; and this cannot be accomplished, and this good policy is defeated, if stockholders are permitted to surrender all their discretion and will in the important matter of voting, and suffer themselves to be mere passive instruments in the hands of some agent who has no interest in the stock, equitable or legal, and no interest in the general prosperity of the corporation. And this is not entirely for the protection of the stockholder himself, but to compel a compliance with the duty which each stockholder owes to his fellow stockholder, to so use such power and means as the law and his ownership of stock give him, that the general welfare of stockholders shall be protected, and the general welfare of the corporation sustained, and its business conducted by its agents, managers, and officers, so far as may be, upon prudent and honest business principles, and with just as little temptation to and opportunity for fraud and the seeking of individual gains at the sacrifice of the general welfare as is possible. This, I take it, is the duty that one stockholder in a corporation owes to his fellow stockholders, and he cannot be allowed to disburden himself of it in this way. He may shirk it, perhaps, by refusing to attend stockholders' meetings, or by declining to vote when called upon, but the law will not allow him to strip himself of the power to perform his duty. To this extent, at least, a stockholder stands in a fiduciary relation to his fellow stockholders."

The foregoing was quoted with approval by Vice-Chancellor Pitney in the case of White v. Thomas Inflatable Tire Co.,[5] which case was very similar to the Shepaug Voting Trust cases. It is especially interesting to note the language in the above quotation in view of a certain later

(4) 60 Conn. 576; 24 Atl. 32.

(5) 52 N. J. Eq. 178; 28 Atl. 75.

holding made by the California case on the same question.

So far as I have been able to learn, the principle of the above cases has been very generally followed,[6] and has never been seriously questioned by any court except as before said by the California court, to which I will refer later.

In Kreissl v. Distilling Company of America,[7] the following rule touching the illegality of such combinations was adopted: "If the stockholders combine . . . to entrust and confide to others the formulation and execution of a plan for the management of the corporation, and exclude themselves by acts made and attempted to be made irrevocable for a fixed period, from the exercise of judgment thereon, or if they reserve to themselves any benefit to be derived from such plan to the exclusion of other stockholders who do not come into the combination, then such combination and the acts done to effectuate it are contrary to public policy, and other stockholders have a right to the interposition of a court of equity to prevent its being put into operation."

While there is some conflict among the courts as to whether an irrevocable proxy given by one shareholder to another to vote his stock for a fixed period is void as against public policy, still there are many that do so hold, upon the theory that each stockholder owes to all others the duty of exercising the right to vote in all matters relating to the welfare of the corporation, which means necessarily, the welfare of all the stockholders. Thus is created what the Connecticut and New Jersey courts, at least, term a fiduciary relationship between stockholders, and the duty arising therefrom cannot be irrevocably transferred to someone else. Many other examples of combinations which the courts have held void might be cited but the foregoing will illustrate the class, and I will briefly outline what the courts have held to be voidable agreements.

It will be noticed that in the foregoing class of cases any stockholder had a right to come into a court of equity and obtain relief, whether a member of the combination or not. Those agreements, however, wherein relief is denied to those not members of the combination, but granted to members of such combination when sought and only to the extent of their own interests in the combination may be regarded as voidable. The courts have held that they are not against public policy as contracts, but that at the same time they are not enforcible. There is some conflict on this class of cases, for some authorities place in this class the so-called irrevocable proxies and combinations which for a definite period separate the voting power from the ownership of stock. Where the stockholders in a corporation place their stock in the hands of a trustee with power to vote or where they enter into a contract among themselves, providing that a majority of their combination shall have power to decide how all their stock shall be voted and the contracts provide that the power is irrevocable, even those courts which hold the contract not void as against public policy, hold it voidable at the option of the parties to it, with the single exception, so far as I have been able to learn, of the California Supreme Court. The rule obtaining in Ohio is stated in Griffith v. Jewett[8] as follows:

"The owners of these trust certificates are equitable owners of the shares of stock which they represent, and being such the individual right to vote upon the stock pertains to them. They may permit the trustees as holders of the legal title to vote in their stead if they choose, but when they elect to exercise the power themselves, the law will not permit the trustees to refuse it to them."

The above case is very similar to the Shepaug Voting Trust cases, the only possible distinction being on the ground heretofore mentioned, viz.: the object of the combination. In the Voting Trust cases, the court considered the combination, in view of its purposes, to be in the nature of a fraud upon the other stockholders and not for the best interests of the corporation, and in holding the contract void, invoked the reasoning of a fiduciary relationship between the stockholders.

The Ohio case considered the purposes of the combination or at least not prejudicial to the rights of the other stockholders and did not in any way deny or limit the principle of the fiduciary relation-

(6) Guernsey v. Cook, 120 Mass. 501; Noel v. Drake, 28 Kan. 265; Woodruff v. Wentworth, 133 Mass. 309; Freon v. Carriage Co., 43 Ohio St. 38; Harvey v. Improvement Co., 118 N. C. 693; Moses v. Scott, 84 Ala. 608.

(7) 61 N. J. Eq. 5.

(8) Weekly Law Bul. 419.

ship. The reason of both cases, on the basis of the purpose of the combination and not the method of effectuating it, is clear and any possible conflict is avoided, for while the agency is revocable at the will of the principal in any case, the object of the agency must be a lawful one or the contract itself is void. Since the stockholders have the power and the right to combine in an election with a view to placing in office certain persons for the benefit of the corporation, there is no reason why this combination for lawful objects and the preservation of the company's best interests should not be continued indefinitely. For the better accomplishment of this purpose, the stockholders should be permitted to place their stock in the hands of trustees as long as all agree to do so. And it would seem that the only reasonable line of demarcation between the void and the voidable agreements is the object of the stockholders combining and not the method pursued to effectuate the combination. In other words, the legality of their purpose regardless of their method.

And this is even more forcibly shown when we consider those combinations and agreements which have been held to be valid by the courts. In cases where the best interests of the corporation are involved, agreements have been entered into by the various stockholders to place their holdings in the hands of trustees to be voted by interested persons such as creditors or persons furnishing financial aid, who in consideration of this arrangement refrain from pressing their claims. To be sure, there is a proper consideration present in such cases but that consideration is really a part of the purpose of the combination and in a last analysis, it is the purpose and not the consideration which renders such an agreement valid.

In cases where capital has been furnished to aid corporations in financial straits on condition that the control of the corporation should be given to a committee named by the parties furnishing the capital for a definite period, the courts have sustained the contracts. While in all such cases, the voting power is separated from the ownership of the stock, they are distinguishable from the cases heretofore cited, in that the purpose was to aid the corporation and not to secure additional benefits to certain parties in the corporation at the expense of the others. In a sense, the power to vote is coupled with an interest.

In the case of Mobile Railroad Company v. Nicholas,[9] an agreement of this character was involved. The company had defaulted in some of its interest payments and was financially embarrassed. An agreement between its creditors, some of whom had already begun foreclosure proceedings, resulted in a discontinuance of the litigation, upon condition that certain financial aid should be secured by a number of the stockholders placing their stock in the hands of a trust company with an irrevocable power of attorney to vote the stock so long as debentures of the company remained unpaid. This agreement having been completed, the trust company took possession of and voted the stock for a number of years. Later, some of the owners of stock claimed the right personally to vote thereon and attempted by injunction to prevent the trustee from doing so on the theory that their contract was illegal as against public policy. The court refused to sustain this contention and said: "that in determining the validity of an agreement which provided for the vesting of the voting power in a person other than the stockholder, regard should be had to the condition of the parties, the purposes to be accomplished, the consideration of the undertaking, interests which have been surrendered, rights acquired, and the consequences to result."

A somewhat different case is presented in Smith et al v. San Francisco etc. Ry. Co.[10] This case seems to disregard the reasoning and the force of all previous decisions of American courts and bases its decision entirely upon considerations foreign to the true question involved in this class of cases. In that case, Smith, Foster and Markham had purchased forty-two thousand shares of stock of the defendant railway company with the understanding and express agreement at the time of the purchase that the stock should be voted as a unit for five years and that the vote should be cast as the three purchasers by majority vote should decide. It was not a joint ownership of stock, each one of the three men above named having his proportionate share of stock standing in his own

(9) 98 Ala. 92.

(10) 115 Calif. 584, 47 Pac. 582, 35 L. R. A. 309, 56 Am. St. Rep. 119.

name on the books of the company. At a certain election of directors, Smith attempted to vote his own stock contrary to the expressed will of the other two stockholders in the agreement, Foster and Markham. Smith voted his stock and Foster and Markham also voted it under the agreement aforementioned. The election of Smith as a director depended upon whether his stock should be counted as voted by him or as voted by Foster and Markham. It must be conceded that the opinion is based upon the presumption of fact that the agreement entered into between Smith, Foster and Markham that the forty-two thousand shares of stock should be voted as a unit for five years was a part of the consideration for the purchase of the stock by the three men. The court held that such an agreement was a valid one and that Smith had no right to vote his stock contrary to the decision of Foster and Markham, under the terms of their contract, and held that the vote as cast by Foster and Markham at the meeting where directors were elected was the vote which should be counted. In the course of the opinion, the court said:

"It was within the power of the parties to contract in reference to this property as fully as with regard to any other property. They were at liberty to make as a condition of their purchase that its management should be held by any of them, or by a majority of the three, and the terms of the agreement for such purpose could not be repudiated by either after the purchase had been made. It may be assumed that neither of the parties would have entered into the transaction, or agreed upon the purchase of the stock, except upon these conditions, and it must be held that each contributed his money to the purchase of the stock upon the promise made to him by the others. There was thus a sufficient consideration for the agreement granting the right to vote the stock. It was in the nature of a power coupled with an interest, and, being given for a valuable consideration, could not be revoked at the pleasure of either. Key v. Dolphin, 92 Hun (N. Y.) 230."

The above case seems to proceed upon the theory that the only interested parties were Smith, Foster and Markham and that if there was a proper consideration for the agreement entered into between them that was all that was necessary. It ignores completely the fact that the corporation itself and the other stockholders had any interest or rights in the premises, and takes no notice whatever of the fiduciary relationship existing between stockholders which the foremost courts of this country have been so jealous in protecting. I do not hesitate to say that the principle of this case is entirely wrong and that the authorities cited in the opinion fail absolutely to sustain it. It is a principle which would be most vicious if applied to the commercial law of this country to-day as it gives the absolute power to control a corporation to minorities regardless of the will of a majority. Chief Justice Beatty enters a strong dissent to the majority opinion in the above case and says in part:

"The contract between Smith, Markham and Foster was, in my opinion, void as against the policy of the law giving to the holders of a majority of the stock of a corporation the right of control. Its sole purpose and object was to give to a minority of the stockholders the power to control the affairs of the corporation against the will of the majority, and that object is secured by means of this judgment. There is not time at my command to go over these decisions, but I am satisfied that the weight of authority is against the validity of any contract by which the sole owner of stock parts irrevocably with the right to vote it, with the effect of putting a minority in control of the corporation."

In the note to the case in 56 Am. St. Rep. 138, it is said:

"It is difficult to overestimate the importance of the decision in the principal case and the evils which will result, if its conclusions are generally adopted by the American Courts."

Insofar as the decision of the California Court is concerned, the rule established would have been enforced even though Smith had parted with his holding to some one else and it would then have been possible for Markham and Foster to have absolutely controlled the corporation, even though they held a minority of the stock and even though every other stockholder was opposed to the policy they desired to enforce.

To take the simplest possible example, let us suppose that there were nine shares of stock in a corporation of which one per-

son held four and the other five were held, one by each of five different persons; suppose the five persons holding the five shares of stock should have purchased them under some such agreement as was contained in the California case, to the effect that they should be voted as a unit and as a majority of the five stockholders, or three, should determine. Suppose that two of these stockholders occupied the position of Smith and that they had transferred their stock to the man owning four shares. He would then be in the possession of six shares and the syndicate would actually own but three. Under the California ruling, the syndicate with its three shares would control the corporation to the exclusion of the holder of two-thirds of the stock.

I do not believe that it is the policy of the courts to uphold any pooling contract except upon the theory of the lawfulness or rather propriety of its purpose. I have been able to find no case in which any other principle could be said to have influenced the decision except the California case, last above cited, and I am firmly convinced that the principle of the California case is wrong and vicious altogether, and that the California Supreme Court occupies a unique and wholly unsupported position.

Granting, however, that certain contracts such as above mentioned are valid and enforcible, there is nothing to prevent a stockholder from violating them, and while he may render himself liable for damages for so doing, the relief to the damaged party would in most cases be totally inadequate. One owning ten shares may then have the power to give to one or to another group of shareholders the majority by selling to them his stock, thereby giving them the control of the corporation. Damages which would be recovered for the breach would probably be nominal only, or if substantial, could not compensate for the loss of the control of the corporate affairs and the resultant depreciation of value in the stock of those who thereby lost the majority.

To obviate this condition, it is said in Harvey v. Linville Improvement Co.,[11] that "various devices have been resorted to for the purpose of so tying up the stock that no one of the parties to the pool or combination can break the agreement." This is a condition devoutly to be wished for by those desiring thus to control corporations and it is clear that none of the above methods would prove satisfactory. The court after making the above quotation, points out numerous plans which have been tried and failed. Among those are irrevocable proxies which were pronounced revocable in Woodruff v. Dubuque etc. R. Co.,[12] and the transfer of stock to trustees, who in return therefor give their certificates to stockholders which trust certificate the courts have held could be returned by the stockholder and the trust company would be forced to turn over his stock.

Another scheme which has been attempted is for the parties to contract together not to dispose of their stock for a specified time or only to specified persons or to purchasers acceptable to all, but the courts have decided[13] that any party might sell his stock when, and to whom he pleased. Again it was attempted to restrict the sale of the stock by the by-laws but this has been held illegal.[14]

Wherever one corporation is permitted to own stock in another corporation without restriction, an effective plan for pooling stock can easily be devised. The title of a majority of the stock can be taken by the holding company to be voted by the directors of that company. So long as those who favor holding the stock and voting it are directors, the control will be easily maintained. But the stockholders of the holding company may change and they may elect directors who are not in accord with the idea of thus controlling one corporation by another. Besides, there are only a few states in which one corporation can legally purchase and hold the stock of another. Generally such purchase would be ultra vires and could be prevented by the state or the shareholders of the purchasing corporation.

The most feasible plan for creating the desired voting trust is by means of a common law joint stock company. This kind of an organization is independent of legislative authority for its powers or its existence. It is formed by the parties in-

(11) 118 N. C. 693; 54 Am. St. Rep. 749.

(12) 30 Fed. 91.

(13) Moses v. Scott (Ala.), 4 Southern 742; Fisher v. Bush, 35 Hun. (N. Y.) 642; Williams v. Montgomery, 68 Hun. (N. Y.) 416.

(14) Morgan v. Struthers, 131 U. S. 246; 35 Law Ed. 132; Fechheimer v. National Exchange Bank, 79 Va. 80, and Orr v. Bigelow, 14 N. Y. 556.

terested and the measure of its powers and authority is the articles of association. It is in the nature of a corporation and of a partnership but essentially different from both. Stock may be issued, held, and transferred as in corporations. The sale of a share by one of the company will not, if so provided, work a dissolution of the association, as would the sale of a partner's interest in a partnership. The articles may provide, however, that the purchaser of such share of stock shall not become by such purchase a member of the association, unless acceptable to all the other members. Or, he may be given a right in the property, income or dividends without the right to vote, or to participate in the management of the company's affairs. This restriction could not, of course, be imposed upon a shareholder in a corporation. It will be easily seen that such an organization for the purpose of a voting trust is eminently superior to either a corporation or a syndicate. There being nothing which would prevent a joint stock company from owning the stock of a corporation, it naturally follows that the holders of the majority stock could form such a company for the purpose of pooling their holdings. A majority of the stock in the corporation could be transferred to the joint stock company and in return therefor, the share holders would receive certificates of shares in the joint stock company. There would be no separation of the voting power and ownership of the stock of a corporation inasmuch as the joint stock company would be both the owner of the stock and the voter. The stock would always be voted as such by the directors of the joint stock company in such a manner as to control the corporation. The clause limiting the purchaser's rights upon a sale of the shares in the joint stock company would prevent new shareholders or outsiders getting control of the joint stock company, and would preclude the transfer of any power to the minority stockholders of the corporation. This would seem to present a plan by which the majority stockholders in a corporation could safely combine for its control. I have been able to find no case in which the above method was directly passed upon by any court wherein a voting trust was concerned, but the plan has been approved in New York in Harper v. Raymond, 3 Bosworth Rep. 29, wherein a common law joint stock company had been formed for the purpose of publishing the New York *Times*. In the articles of association in that case, occurred the following:

"Each of the parties hereto shall have the right to sell any portion of his shares of stock; but before selling the same to any other person, he shall offer the same to the association, giving them the refusal thereof for ten days. But no sale of any such shares shall give to the purchaser thereof any right to interfere in the conduct, management or affairs of said newspaper; or either of them; and no such purchaser shall acquire any interest whatever in the profits of said papers till he shall have received a certificate or scrip for his shares, signed by all the parties hereto, and duly registered in a book to be kept for that purpose, which scrip shall always express from whom such shares were purchased, and shall certify that the holder of such scrip takes the same with notice of and subject to the articles of association between the parties hereto, and is entitled to participate only in that portion of the profits which may be assigned to the party so selling to said purchaser; and shall not be entitled to any voice or agency whatever in the conduct, control, management or affairs of said company or of said newspapers."

In construing this article, the court held that a purchaser of shares of stock who had not complied with the articles or been admitted to membership of the association in accordance with the articles did not become a member and could not be intruded upon the association. The sale of shares in an attempt by one of the members to transfer his interest to a stranger did not work a dissolution of the partnership or joint stock company, but only gave to such purchaser an equitable right to draw his portion of the dividends, until such company was dissolved. At that time, he would share with the other owners in a distribution of the company's assets.

The feasibility of the above plan appeals to me as it seems to be open to none of the faults which have caused so many other plans to fail, and while the control of a corporation by minorities is a condition to be deplored in most cases and which will be most carefully scrutinized by the courts in searching out the objects of the pool, still it is clear that such things can be done.

THOMAS C. COFFIN.

Boise, Idaho.

LANDLORD AND TENANT—CONSTRUCTIVE EVICTION.

BARNARD REALTY CO. v. BONWIT.

Supreme Court, Appellate Division, First Department. February 7, 1913.

139 N. Y. Supp. 1050.

Nightly noises made by rats in the walls and ceilings of a tenement, coupled with an offensive odor, which increased until the premises became untenantable, amounted to a constructive eviction, since the tenant could not make the place habitable by pulling down the walls and ceilings to eliminate the rodents.

CLARKE, J.: (1) This is an action to recover rent of an apartment. The defense was constructive eviction. The jury found for the defendant. The verdict having been set aside solely as contrary to law, the facts found are established.

(2) Defendant and his wife moved into an apartment on the top floor of a new apartment house on the 15th of September, 1910, and moved out on the 8th of November, 1910. The reason therefor was the disturbance caused by the nightly meetings and performances of rats in the walls and ceilings, coupled with a most offensive odor, which increased until the place became untenantable. There are two Appellate Term decisions—one, Jacobs v. Morand, 59 Misc. Rep. 200, 110 N. Y. Supp. 208, in which the presence of bed bugs, croton bugs, red ants, etc., was held not to be sufficient to establish a constructive eviction; and the other, Madden v. Bullock (Sup.) 115 N. Y. Supp. 723, which held that the loathsome stench of dead and decayed rats was sufficient.

Very large numbers of people live in tenement houses, apartment houses, and apartment hotels in this city. Such tenants have, and can have, control only of the inside of their own limited demised premises. Conditions unknown to the ancient common law are thus created. This requires elasticity in the application of the principles thereof. An intolerable condition, which the tenant neither causes nor can remedy, seems to me warrants the application of the doctrine of constructive eviction. The rule in Jacobs v. Morand, supra, in regard to bugs and ants within the apartment, which can be dealt with by the tenant by processes known to all housewives, should not be extended to cover offensive and unbearable nuisances outside of the apartment. This tenant could not pull down the walls or the ceilings. He and his family ought not to be compelled to pay rent for an apartment in which they could not live.

This court has held that, when the landlord had the entire control of the heating plant, a failure to provide sufficient steam heat was enough to constitute constructive eviction. Berlinger v. Macdonald, 149 App. Div. 5, 133 N. Y. Supp. 522. Of course, that case is different from the one at bar, because there it was within the power of the landlord to furnish the heat, and, if he did not, it was an act of omission upon his part. But here the jury have found the existence of an intolerable condition. The tenant did not cause it, and could not remedy it. If any one could it was the landlord. He attempted to and failed. We think the flat dweller was justified in his abandonment of the premises.

The determination of the Appellate Term and the order of the Municipal Court should be reversed, and the verdict of the jury reinstated, with costs to the appellant in all courts. All concur.

NOTE.—*Constructive Eviction of Apartment House Tenant by the Presence of Vermin.*—The instant case is on the theory of a nuisance growing up, from landlord's default, in the part of leased premises remaining under his control, and it is said to be an extension of common law principles to new conditions. There is not much authority of a direct character on the question involved, and we have instanced a few cases on the question of destruction of premises and have noticed the theory of past neglect being equivalent to the omission of a present active duty. The case is in itself of some importance.

The rule is different in different states upon the question whether a tenancy survives the destruction of the leased premises, where nothing is said upon this subject. Thus in Missouri it has been held that such destruction does not, as matter of law, terminate a lease. Lincoln Trust Co. v. Nathan, 175 Mo. 32, 74 S. W. 1007. In Utah it has been ruled that the relation of landlord and tenant ceases with the destruction of the subject-matter of the lease. Utah Optical Co. v. Keith, 18 Utah 464, 56 Pac. 155. Alabama applies this rule to a lease of apartments in a building for the purposes of trade. McMillan v. Solomon, 42 Ala. 356, 94 Am. Dec. 654. And Massachusetts (Shawmut Nat. Bank v. City of Boston, 118 Mass. 125); California (Ainsworth v. Ritt, 38 Cal. 89); Georgia (Gavan v. Norcross, 117 Ga. 356, 43 S. E. 771), and Illinois (Moran v. Bergin, 111 Ill. App. 313), distinguish as to termination by the fact of there being or not an interest in the land, in the former case destruction not terminating, while in the latter it does.

Eviction, however, by premises becoming untenantable, implies there is fault by landlord, and the instant case is interesting in showing that even though a landlord may not be at fault, yet if the conditions rendering occupation intolerable cannot be corrected by the tenant there may be the equivalent of fault by the landlord and, therefore, a constructive eviction. This, as is seen, is upon the theory, that the common law knew of nothing like apartment houses, flats, etc., and there is a call for elasticity in the application of common law principles.

In addition to what the opinion in the instant case says as to Jacobs v. Morand, 110 N. Y. Supp. 208, it is suggested that the vermin spoken

of could not be gotten rid of by the tenant because the building generally was infested, but the court considered the nuisance abatable by the tenant without having to go outside of his apartment. It was said: "The legislature has passed a statute relieving tenants from their common law obligations where the demised premises have been destroyed by fire, tempest, or other sudden and unexpected event; but the legislative sense of relief to tenants has not as yet reached the case of rats, mice, bugs roaches or other vermin, and all questions as to them must be decided according to the wisdom of the common law. The inconvenience is one to which all more or less are subject at times, but, with ordinary skill and attention may be abated by the tenant." The instant case treats the matter upon the proposition of abatability *vel non* and stands not upon an intolerable condition being caused merely by vermin.

In Tallman v. Murphy, 120 N. Y. 345, 24 N. E. 716, an apartment house is spoken of as supplying "all sanitary arrangements and many other things essential to the proper enjoyment of the apartments," and the duty owed by the landlord to keep appliances in order. It is but a step further to hold that rats in walls, whose surface is only under tenant's control, should be gotten rid of by the landlord controlling the building.

As well said by XLVIII N. Y. Law Journal, p. 3084: "If an intolerable condition exists in a demised apartment, whether from failure to furnish heat or to keep down vermin in the walls of the building, a tenant who is powerless to avert the evil should be permitted at least to seek refuge in flight without being compelled to go on paying rent. Even though he is himself unable promptly to eradicate the evil, it is proper to place legal responsibility for the intolerable condition which has been allowed to grow up under him rather than upon the tenant who entered in ignorance of it." Here is the basic reason for extension of the common law rule. It should be deemed fraud and deceit to rent an apartment whose intolerable condition has been brought about by a landlord's neglect and not from natural wear and decay. It is a latent defect and the landlord should be bound by knowledge of its existence because it is a consequence of his neglect.

A landlord must keep an orderly house or there is constructive eviction. Phyfe v. Dall, 130 N. Y. Supp. 231. And if his inability to do this arises from his not having taken prior necessary steps he should not be allowed to plead his own negligence. If a landlord does not suppress when he can, offensive conduct of other tenants, this has been held to be a constructive eviction. Milheim v. Baxter, 46 Colo. 155, 103 Pac. 376. C.

ITEMS OF PROFESSIONAL INTEREST.

ILLINOIS LAWYERS MEET AT SPRINGFIELD.

The annual meeting of the Illinois State Bar Association will be held at Springfield on Tuesday and Wednesday, April 8 and 9.

This will be an unusually interesting meeting. John F. Voigt, the secretary, announces that all lawyers of the state are invited to attend, whether members of the Association or not. The question of the reform of practice, procedure and pleadings, which is attracting so much attention all over the country, will be discussed on the first day of the meeting by members of the Association representing the different localities of the state.

Hon. Henry D. Clayton, of Alabama, one of the leading lawyers and statesmen of the South, Chairman of the Judiciary Committee of the last Congress, and of the committee which successfully conducted the impeachment proceedings against Judge Archbold, will address the Association. He will probably have something to say about the manner of conducting impeachment proceedings in the United States Senate.

Judge Harry Higbee, President of the Association, will discuss reforms in the law and the work the Association is doing to make the administration of justice by the courts keep pace with modern business methods.

Albert M. Kales, of Chicago, will speak on the English Judicature Act, and Herbert Harley, of Michigan, will talk about the Canadian Courts. These two addresses will contrast the certain and speedy methods of English and Canadian Courts with our own and suggest points for the improvement of our methods.

Papers will be read and addresses delivered upon important subjects of interest to the bar by other distinguished lawyers.

On the evening of the first day the Sangamon County Bar Association will entertain the State Association at the Sangamon Club at Springfield. The meeting will close with a banquet which will be addressed by Governor Dunne, Chief Justice Dunn of the Supreme Court, Speaker McKinley of the Illinois House of Representatives, Ex-Lieutenant Governor Northcott and Major Tolman of Chicago. The banquet will be given in the banquet-room of the Leland Hotel at Springfield and will be attended by the members of the Association and their guests, including the ladies.

Every member of the bar in the state who can do so should be present at the meeting.

HUMOR OF THE LAW.

"Do you mean to say such a physical wreck as he gave you that black eye?" asked the magistrate.

"Sure, your honor, he wasn't a physical wreck till after he gave me the black eye," replied the complaining wife.—London Telegraph.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

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1. **Attorney and Client**—Rule Against Attorney.—Where a merchant sold his stock of goods in bulk, in tne manner required by Civ. Code, 1910, but omitted a debt for a piano, and a firm of attorneys, having his note therefor for collection, filed a petition in involuntary bankruptcy, but on payment of the debt had the petition dismissed, the superior court has jurisdiction by rule to compel the attorneys to pay the money to their client; the money not having been collected under process from a federal court.—Phillips & Crew Co. v. Jones & Hancock, Ga., 76 S. E. 1019.

2. **Bankruptcy**—Amending Proof.—Where the court in bankruptcy proceedings ordered a sale on condition that the purchaser should pay to each unsecured creditor a specified per cent., and the purchaser paid the money, the court must allow the filing nunc pro tunc of an amended formal proof of the claim of one of the unsecured creditors.—In re Basha, C. C. A., 200 Fed. 951.

3.——Composition.—An order refusing to confirm a composition, on the ground that the judge is not satisfied that it is for the best interests of the creditors, is not a final order denying a discharge, and is not appealable.—In re McVoy Hardware Co., C. C. A., 200 Fed. 949.

4.——Exclusive Remedy.—The remedy provided by Bankruptcy Act July 1, 1898, § 15, for setting aside a bankrupt's discharge for fraud, held exclusive so that a federal court of equity in another district than that in which the discharge was granted had no jurisdiction to entertain a suit for such relief.—Atlantic Dynamite Co. v. Reger, U. S. D. C., 200 Fed. 1002.

5.——Insolvency.—A bankrupt was "insolvent," at the time he executed a mortgage claimed to be a voidable preference, if the aggregate of his property at a fair valuation was not sufficient in amount to pay his debts.—Ogden v. Reddish, U. S. D. C., 200 Fed. 977.

6.——Laborers.—Laborers, whose services contributed to enhance the assets of the bankrupt, held to have a lien for wages due, and to be entitled to priority of payment.—In re Blackstaff Engineering Co., U. S. D. C., 200 Fed. 1019.

7.——Lien.—The lien of a judgment on real estate or execution levy on personal property, if acquired within four months prior to bankruptcy adjudication against the debtor, is vacated on an adjudication of bankruptcy.—In re Harrington, U. S. D. C., 200 Fed. 1010.

8.——Preference.—Sale of a newspaper agency by assignees of the bankrupt, who had received an assignment thereof as security for a loan, and were thereafter compelled to pay an additional amount to save the agency from revocation, held not a preference.—In re Martin, C. C. A., 200 Fed. 940.

9.——Priority.—Where a trustee in bankruptcy of a lessee used the leased premises for the administration of the estate, the estate was liable to the lessor for the reasonable value of such use, and the demand therefor was entitled to priority under Bankruptcy Act, § 64.—In re Abrams, U. S. D. C., 200 Fed. 1005.

10.——Rent.—A demand for rent accruing after the bankruptcy of the lessee in a lease authorizing the lessor to re-enter on default and to recover possession by statutory action is not a "debt absolutely owing" and the lessor is not entitled to a lien created by Code Iowa 1897, § 2992.—In re Abrams, U. S. D. C., 200 Fed. 1005.

11. **Banks and Banking**—Contract.—Though a bank agreed to honor the checks of a commission house in favor of its patrons, yet, where all of the funds deposited were appropriated by the commission house, neither the house not its sureties can recover for refusal to honor checks in favor of its patrons.—Carlton v. Texas Banking & Investment Co., Tex., 152 S. W. 698.

12. **Bills and Notes**—Acceptance.—Reply telegram, stating that bank had money on deposit to pay a certain check, held equivalent to an acceptance.—Elliot v. First State Bank of Ft. Stockton, Tex., 152 S. W. 808.

13.——Accommodation.—Accommodation paper must always be supported by a consideration, but the accommodation party is bound by the beneficial consideration moving to the party accommodated, if no other passes.—Central Bank & Trust Co. v. Ford, Tex., 152 S. W. 700.

14.——Assignment.—While an assignment on the back of a mortgage or on a separate paper may be effective to transfer the equitable title to the notes secured, it is not a commercial indorsement cutting off defenses available to the maker against the original payee.—Fassler v. Streit, Nebr., 139 N. W. 628.

15.——Consideration.—A note being given on condition that the maker should not be called on to pay it, if, when it was due, the indebtedness of the payee to another, payment of which the maker had guaranteed, existed to the amount of the note; and, the indebtedness having so existed at such time, the note never had a valid inception.—Copans v. Dougan, 139 N. Y. Supp. 427.

16.——Descriptio Personae.—Where a note is payable to a person as "executor" or "administrator," his indorsement of the note in his capacity as executor or administrator imposes a personal liability upos him; the addition of the word indicating his representative capacity being mere descriptio personae.—Abney v. Citizens' Nat. Bank of Hillsboro, Tex., 152 S. W. 734.

17.——Payment.—That the payor of a note paid it to the payee or his agent, without demanding a cancellation or return thereof, was not conclusive evidence of negligence; that being a question of fact for the jury under all the circumstances.—Walker v. Rudd, Neb., 139 N. W. 662.

18.——Place of Contract.—The courts of Texas in passing on the liability of an indorser of a note executed, payable, and indorsed in Oklahoma are not governed by the decisions of the courts of Oklahoma, declaring the common-law rule that a note stipulating for attorney's fees in case of a suit is nonnegotiable, but will apply the law of Texas making it negotiable.—Hardy v. Lamb, Tex., 152 S. W. 650.

19.——Series.—The purchase of one of a series of notes after maturity operates as a purchase of all of them after maturity.—National State Bank of Mt. Pleasant, Iowa, v. Ricketts, Tex., 152 S. W. 646.

20. **Carriers of Goods**—Agency.—Where the consignee is a mere agent of the consignor, a right of action against the carrier is in the consignor alone.—Zimmern's Coal Co. v. Louisville & N. R. Co., Ala., 60 So. 598.

21. **Carriers of Passengers**—Elevator.—Owner or occupier of a store building, maintaining a passenger elevator therein, held not an insurer of the safety thereof, but only bound to use reasonable care as to the appliances provided and in the maintenance and operation thereof.—Rumetsch v. John Wanamaker, New York, 139 N. Y. Supp. 385.

22. **Carriers of Goods**—Limiting Liability.—A stipulation in a carrier's receipt, limiting liability to an agreed value made to adjust the rate, is not forbidden by Carmack Amendment providing that a carrier shall not be exempted from liability imposed by such amendment.—Adams Exp. Co. v. Croninger, 33 Sup. Ct. Rep. 148.

23.——Misrepresentation. — Misrepresentation by shipper as to contents of shipment in order to obtain a lower rate held not to prevent a recovery for loss of the shipment where the misrepresentation did not contribute to the loss.—Mobile, J. & K. C. R. Co. v. T. J. Phillips & Co., Miss., 60 So. 572.

24.——Rates.—Erroneous quotation by agent of an interstate carrier of a lower freight rate than that fixed by the published tariff gives no right of action to a shipper who sustains injury by acting on the faith of the quoted rate, though such tariff was not posted in the carrier's local station.—Illinois Cent. R. Co. v. Hendersos Elevator Co., 33 S. Ct. Rep. 176.

25. **Carriers of Live Stock**—Res Ipsa Loquitur.—The mere fact that a horse shipped was sick after or during transportation did not authorize the inference that it was made so by the carrier's negligence.—Thompson v. Chicago & N. W. Ry. Co., Iowa, 139 N. W. 557.

26. **Carriers of Passengers**—Baggage.—A passenger to whom a carrier delivers a baggage check need not prove that the carrier actually received the baggage until the carrier has rebutted the constructive delivery evidenced by the check by proof that it never received the baggage.—Lewis v. Ocean Steamship Co., Ga., 76 S. E. 1073.

27.——Ejection.—A formal tender of money by one about to be ejected from a train is not necessary, where the conductor in reply to an offer to pay said that the only thing to do was to get off.—Southern Kansas Ry Co. of Texas v. Wallace, Tex., 152 S. W. 873.

28. **Commerce**—Interference.—Laws 1906, forbidding any railroad to charge demurrage on cars received or placed for loading in this state until four days after notice to the consignee, without limiting such charges to intrastate commerce, held repugnant to the commerce clause enforced by the Interstate Commerce Commission by demurrage rules allowing a free time of only two days.—Sargent v. Rutland R. Co., Vt., 85 Atl. 654.

29.——Interference.—Rule of state railroad commission under which a per diem penalty may be exacted from an interstate carrier for delay in delivering cars to the consignee held an unreasonable burden on interstate commerce where the requirement as to delivery is absolute, and makes no allowance for any unavoidable cause for failure to deliver.—Yazoo & M. V. R. Co. v. Greenwood Grocery Co., 33 S. Ct. Rep. 213.

30. **Common Carriers**—Limiting Liability.—A common carrier may make an open and fair contract limiting the amount recoverable by a shipper in case of loss or damage to an agreed value, made to obtain a lower rate proportional to the risk.—O'Connor v. Great Northern Ry. Co., Minn., 139 N. W. 618.

31. **Contracts**—Mental Capacity.—Mere mental weakness will not avoid a contract, unless the other party used unfair means amounting to fraud or imposition; and undue influence cannot be predicated upon advice, persuasion, affection, or gratitude, unless it be so importunate as to subordinate the will and take away free agency.—Wherry v. Latimer, Miss., 60 So. 563.

32.——Merger.—Where the payee of a note verbally agreed with one of the makers to discharge the latter from liability on the note, a subsequent written contract, by which such liability was restored in consideration of the release of a mortgage on the property of the comaker, did not extinguish or merge the verbal agreement, but was an independent contract.—Edge v. Ott, Ky., 152 S. W. 764.

33.——Public Policy.—Any agreement which is calculated to induce a laxity in the performance of a public duty is void.—Gutschenritter v. Whitmore, Iowa, 139 N. W. 567.

34. **Corporations**—Creditor.—When a creditor proves the issuance of stock, and that he subsequently trusted the corporation, it is presumed that he relied on the stock subscription, and the representation that the stock was fully paid.—Randall Printing Co. v. Sanitas Mineral Water Co., Minn., 139 N. W. 606.

35.——Directors.—Directors of a private business corporation represent both the majority and minority stockholders, and, while they may not act in violation of law, dissipate the corporation's assets, or secure private advantage, they possess a wide discretion in determining its business policies and the methods of executing them.—Post v. Buck's Stove & Range Co., C. C. A., 200 Fed. 918.

36.——Dissolution.—A corporation could not be sued after it had been dissolved and a receiver appointed for it.—Southwestern Surety Ins. Co. v. Anderson, Tex., 152 S. W. 816.

37.——Pleading.—Where a suit is brought against a corporation for breach of contract, the petition should specifically allege who represented the corporation in making the contract.—Georgia, F. & A. Ry. Co. v. Parsons, Ga., 76 S. E. 1063.

38.——Promoters.—A corporation may recover secret profits made by some promoters without knowledge of their associates in the purchase of land for proposed corporations and require them to surrender shares of stock issued to them for their services as promoters.—Davis v. Las Ovas Co., 33 S. Ct. Rep. 197.

39.——Promoters.—Promoters making contracts and incurring liabilities are personally liable in the absence of an express agreement to the contrary, and are not released because the corporation subsequently assumes liability.—Bradshaw v. Jones, Tex., 152 S. W. 695.

40.——Ultra Vires.—A corporation with powers limited to dealing in coal and to owning and using property necessary for that business had no power to purchase stocks and bonds of a railroad company and pay therefor a valid claim against the receiver of a former company for coal cars sold to him.—Irvine v. Chicago, Wilmington & Vermillion Coal Co., C. C. A., 200 Fed. 953.

41. **Criminal Law**—Documentary Evidence.—In a prosecution of a tax collector for embezzling, accused's reports to the comptroller were properly admitted in evidence, though some of them were signed by his deputies.—Ferrell v. State, Tex., 152 S. W. 901.

42.——Venue.—Venue of prosecution for stealing money from hand bag is in county where hand bag is taken with intent to steal its contents, though money is actually discovered and taken from the bag in another county.—Lane v. State, Tex., 152 S. W. 897.

43. **Damages**—Expenses.—A party performing a contract at a loss may recover nominal damages for its breach, and also incidental expenses necessarily made in anticipation of performance.—Borough Development Co. v. Harmon, 139 N. Y. Supp. 362.

44.——Husband and Wife.—Where a husband sued for injuries to his wife, his evidence that he had expended a given sum during his wife's illness on account of her injuries was not ob-

jectionable because the sum included necessary subsistence.—Nashville, C. & St. L. Ry. v. Hubble, Ga., 76 S. E. 1009.

45. **Death**—Damages.—The financial benefit which might be expected from a husband is the measure of damages in an action under Employer's Liability Act for the benefit of the widow of an employe.—Michigan Cent. R. Co. v. Vreeland, 33 S. Ct. Rep. 192.

46.——Divorce.—In default of children or widow of one whose death was caused by negligence, the surviving mother between whom and the father there is a judgment of separation a mensa et thoro is entitled to one-half of the amount assessable for decedent's suffering, and to damages for her own mental, moral, and material injury.—Johnson v. Industrial Lumber Co., La., 60 So. 608.

47. **Deeds**—Delivery.—Where a duly executed deed with evidence of recordation is shown, a presumption of delivery not later than the date of the acknowledgment arises; but the presumption is not conclusive, and may be rebutted.—Tucker v. Glew, Iowa, 139 N. W. 565.

48.——Repugnancy.—Where there is a repugnance between a general and a particular description, the latter controls; but, whenever possible, the real intention is to be gathered from the whole description.—Holman v. Houston Oil Co. of Texas, Tex., 152 S. W. 885.

49. **Easements**—Additional Burden.—Where a common switch was laid by the owners of adjacent property to be used exclusively and equally for their respective businesses carried on upon that property and no other, one of them cannot use it for business carried on upon additional land, such a use casting an additional burden upon the easement.—P. M. Bruner Granitoid Co. v. Glencoe Lime & Cement Co., Mo., 152 S. W. 601.

50.——Secondary.—The extent of an implied or secondary easement depends upon the purpose and extent of the grant of the primary easement.—Cram v. Chase, R. I., 85 Atl. 642.

51. **Eminent Domain**—Abutting Owner.—Where a city, in improving a street, destroys or impairs right of ingress and egress to and from an abutting house, an action for damages will lie.—City of Gainesville v. Henderson, Ga., 76 S. E. 1034.

52. **Equity**—Certificate of Counsel.—Failure of the demurrer to a bill to contain a certificate of counsel that it was well founded or an affidavit that it was not interposed for delay was not fatal, but could be corrected nunc pro tunc.—Atlantic Dynamite Co. v. Reger, U. S. D. C., 200 Fed. 1002.

53.——Fraud.—A representation constitutes fraud so as to be a ground for relief in equity only when it is of a material fact, and is false to the knowledge of the party making it, and is made to induce, and does induce, the other party to act or omit to act.—Taylor v. Mullins, Ky., 152 S. W. 774.

54.——Laches.—A court of equity is not bound to determine the question of laches by analogy to the statute of limitations applicable to actions at law of like character, but may determine the question in accordanee with the equities of the case.—Burgess v. Hillman, C. C. A., 200 Fed. 929.

55. **Evidence**—Expert Testimony.—The opinions of skilled witnesses are admissible, whenever the subject is one upon which competency to form an opinion can be acquired only by a course of special study or experience.—In re Schmidt's Will, 139 N. Y. Supp. 464.

56.——Limiting Purpose.—In an action against a carrier for misdirecting plaintiff to alight at the wrong station at night, evidence of plaintiff's contemporaneous declaration immediately after the train had left, and he had discovered he had been put down at the wrong station, that he had started for B, and had been put down at the wrong station, though not res gestae, was admissible to show that plaintiff's claim was not manufactured for the purposes of suit.—Perrett v. Morgan's Louisiana & T. R. R. & S. S. Co., La., 60 So. 639.

57.——Presumption.—In the absence of a contrary showing, it is presumed that a draft would have been accepted and honored had it been presented.—Gutschenritter v. Whitmore, Iowa, 139 N. W. 567.

58.——Res Gestate.—Where, immediately after defendant's street car had struck plaintiff's automobile, the motorman opened the door of the car vestibule and said to the bystanders, "That —— —— —— ran into me, and I rang the gong for him," such declaration was admissible as res gestae.—Hedlund v. Minneapolis St. Ry. Co., Minn., 139 N. W. 603.

59.——Res Gestae.—In an action for the probate of a will, contested on the ground of fraud and undue influence, letters received by the sole beneficiary, the testator's young wife, who married him only a few months before the execution of the will, showing that it was her intention to marry him for his money, are admissible as part of the res gestae, being found in her possession.—In re Van Ness' Will, 139 N. Y. Supp. 485.

60. **Exchange of Property**—Rescission.—Where one is induced to exchange his land for that of another through fraudulent representations, he may, on rescinding the contract, recover for improvements placed on the land received by him though he did not disclose incumbrances on his own land which had been paid but not released.—Jones v. Edwards, Tex., 152 S. W. 727.

61. **False Imprisonment**—Admissibility of Evidence.—In an action for false imprisonment, the sole question was whether the arrest was lawful, and the mental attitude of defendant in causing the arrest was unimportant.—Reisler v. Interborough Rapid Transit Co., 139 N. Y. Supp. 335.

62. **Fixtures**—Removable.—A tenant's renewal of a lease without stipulation as to the removal of fixtures operates as an abandonment only of such fixtures as are distinctly realty, and not of his right to remove trade fixtures, part of a manufacturing plant, and removable without substantial injury.—Red Diamond Clothing Co. v. Steidemann, Mo., 152 S. W. 609.

63. **Frauds, Statute of**—Equitable Title.—A parol sale of land will be upheld where the vendee is put in possession, and, relying on the sale, makes valuable improvements, such circumstances creating an equitable title which will be protected in equity.—Dixon v. McNeese, Tex., 152 S. W. 675.

64.——Part Performance.—An oral contract for services is not within the statute of frauds where the service has been performed for almost the full period of the contract engagement.—Taylor v. American Radiator Co., Neb., 139 N. W. 685.

65. **Homestead**—Reacquirement.—Where the owner of a homestead, against whom a judgment had been duly recorded, sold the property and thereafter reacquired it, the reacquisition did not revive the homestead exemption, and the property was subject to the judgment under Const. art. 244.—Seal v. Sam, La., 60 So. 616.

66. **Homicide**—Parent and Child.—For a parent having special charge of an infant child to so neglect it that death ensues constitutes manslaughter, though death or grievous bodily harm was not intended.—Stehr v. State, Neb., 139 N. W. 676.

67. **Husband and Wife**—Alienation of Affections.—Where a stranger interferes in the affairs of husband and wife, there is no presumption of good faith, and hence, in an action against a stranger for alienation, an instruction that it is necessary to prove malice that the law presumes malice from wrongful acts is improper.—Phelps v. Bergers, Neb., 139 N. W. 132.

68.——Necessaries.—A married woman, living with her husband, is not liable for necessaries furnished herself and children, unless she expressly contracted to assume the obligation.—Oliver v. Webb., Ga., 76 S. E. 1081.

69. **Injunction**—Repetition of Trespass.—Frequent acts of trespass, accompanied with threats to continue, constitute a sufficient reason to grant an injunction against a solvent defendant at the instance of the owner of the land.—Kimbrell v. Thomas, Ga., 76 S. E. 1024.

70. **Insurance**—Exhausting Remedy. — One who voluntarily submits himself to a law of an order that, if he feels aggrieved at the action of the lodge, he must appeal to the executive

committee and await its final decision before suing in a public court must exhaust his remedy within the order before he can prosecute his claim in a court of law.—Cohen v. Superior Lodge No. 516, I. O. B. A., R. I., 85 Atl. 653.

71.——Limiting Time for Suit.—Reasonable provisions in an insurance policy, limiting the time for suit thereon, are valid, and unless waived are binding upon the parties.—Harvey v. Fidelity & Casualty Co., C. C. A., 200 Fed. 925.

72.——Paid-up.—The term "dividend addition" means something added to the policy in the form of paid-up insurance, and does not mean unapportioned assets or surplus.—Jefferson v. New York Life Ins. Co., Ky., 152 S. W. 780.

73.——Premium Note.—A promise to execute a life policy if, after medical examination, the maker of a note for the premium proves insurable, will not authorize a recovery on the note, where no offer has been made to deliver the policy, though the maker of the note refuses to submit to a medical examination.—Alligood v. Daniel & King, Ga., 76 S. E. 1083.

74.——Trust Clause.—The owner of matches burned while stored with insured as a bailee for hire held the proper plaintiff in an action under the trust clause of a policy.—Czerweny v. National Fire Ins. Co. of Hartford, 139 N. Y. Supp. 345.

75.——Undue Influence.—The original beneficiaries in certificates of a mutual benefit company may maintain a suit to cancel new certificates induced by the undue influence and persuasion of the new beneficiary therein.—Wherry v. Latimer, Miss., 60 So. 563.

76.——Waiver.—An insurer who repudiates a policy, and denies liability, because there was no valid policy in force at the time of the loss, cannot show that the insured has lost his rights thereunder by failing to give immediate notice of loss, as required by the policy.—Singer v. National Fire Ins. Co. of Hartford, Conn., 139 N. Y. Supp. 375.

77.——Waiver.—While the courts will seize any circumstance indicating an intention to waive a forfeiture of an insurance contract, the insurer or some one authorized to represent it must have had actual knowledge of the fact on which the waiver depended.—Wiley v. Rome Ins. Co., Ga., 76 S. E. 1067.

78. **Judgment**—Opening Default.—A default not willfully or intentionally allowed, but attributable to the inexperience of defendant's attorney will be opened on motion, since it is the duty of the courts to protect litigants from the neglect of their attorneys.—Kraus v. Comet Film Co., 139 N. Y. Supp. 306.

79. **Landlord and Tenant**—Covenant.—A landlord's covenant to pay for repairs upon termination of the lease on notice of sale is a "covenant running with the land," and binds the heirs and assigns of the parties.—Bruder v. Crafts & D'Amora Co., 139 N. Y. Supp. 307.

80.——Forfeiture.—Under a lease binding the lessee to insure the premises against fire, etc., and to deliver the policies to the lessor, the latter need not demand such delivery before proceeding to give notice of forfeiture under the lease for such breach.—Perkins v. Kirby, R. I., 85 Atl. 648.

81. **Libel and Slander**—Privilege.—The qualified privilege against libel for the publication by a newspaper of the report of a judicial, legislative, or other public and official proceeding held only to apply to a fair and true report of the proceedings, and not to extend to matters added thereto.—Smith v. New Yorker Staats Zeitung, 139 N. Y. Supp. 325.

82. **Mandamus**—Inspection of Records.—Where policy holders of a mutual life insurance company voluntarily join in mandamus as possessing a joint interest to compel an inspection of the records of the company, a peremptory writ must be denied where some of them seek an inspection for an improper purpose.—State ex rel. Haeussler v. German Mutual Life Insurance Co. of St. Louis, Mo., 152 S. W. 618.

83. **Master and Servant**—Burden of Proof.—The burden of proof that the employe made any profit or by reasonable diligence could have made any profit after his discharge is on the defendant.—Georgia, F. & A. Ry. Co. v. Parsons, Ga., 76 S. E. 1063.

84.——Independent Contractor.—One who has contracted to erect a dwelling house, but had no control over the subcontractor, who, after the work was completed, placed a mortar box in a position so that plaintiff fell over it and was injured, was not liable for the injuries.—Grandy v. Anderson, R. I., 85 Atl. 641.

85.——Master's Assurance.—If a servant does not know, and cannot, by ordinary care, ascertain, that a place is dangerous, he may rely on the assurance of the master; but it is otherwise if the danger be obvious to an ordinarily prudent man of the servant's capacity and experience.—Southern Bell Telephone & Telegraph Co. v. Shamos, Ga., 76 S. E. 1083.

86.——Police Power.—Under its police power, the state may limit the hours which women may work in certain industries.—People ex rel. Hoelderlin v. Kane, 139 N. Y. Supp. 350.

87. **Mechanics' Lien**—Filing Statement.—Where a materialman in filing his statement described property of the owner other than that on which the improvements were made, which remained uncorrected until after the time allowed for filing such statement, and for suing to enforce the lien, he lost his lien.—Lebanon Lumber Co. v. Clarke, Ky., 152 S. W. 550.

88. **Monopolies**—Cornering Market.—A conspiracy to run a corner in cotton, thereby enhancing artificially its price to all buyers throughout the country, is within Anti-Trust Act.—United States v. Patten, 33 S. Ct. Rep. 141.

89.——Exclusive Agency.—A contract by which a corporation manufacturing dairy supplies under various patents, constituted another corporation its exclusive sales agent, and fixed the price lists, is not a violation of Act July 2, 1890, prohibiting combinations in restraint of commerce.—Virtue v. Creamery Package Mfg. Co., 33 S. Ct. Rep. 202.

90. **Mortgages**—Junior Lien.—A sale under a trust deed will cut off the equity of redemption of a junior lienholder who, without timely tender of the amount of the senior claim, files suit for foreclosure and adjustment of equities before the actual sale, but after the senior lienor's election to proceed by trustee's sale and after advertisement made.—Tolleson v. Nobles, Tex., 152 S. W. 850.

91. **Municipal Corporations**—Abutting Owners.—The only interest of a municipal corporation in its streets is that of the public in the highways, and it has no interest in protecting the rights of abutting owners of the fee against interference with the highway by third persons without consent of such owners.—Northern Westchester Lighting Co. v. Village of Ossining, 139 N. Y. Supp. 373.

92. **Navigable Waters**—Prescriptive Right.—No prescriptive right can be acquired by the use of a navigable stream; such a stream being as much a public highway as a street, and so an individual using a stream cannot insist upon a continuance of his public use, as against structures lawfully impeding it.—Milwaukee Western Fuel Co. v. City of Milwaukee, Wis., 139 N. W. 540.

93. **Negligence**—Evidence.—A direct connection between the negligence and injury must be shown, but it is not necessary that plaintiff's evidence exclude all mere possibilities that the injury may have been produced by other causes, if the reasonable deduction from the evidence is that defendant's negligence was the producing cause.—Houston Lighting & Power Co. of 1905 v. Barnes, Tex., 152 S. W. 722.

94.——Imputability.—If intestate had charge of the wagon and control of the driver when he was jerked from the wagon and injured by a defect in the street, and the driver's negligence proximately contributed to intestate's death, such negligence is imputable to intestate.—City of Louisville v. Bott's Adm'x, Ky., 152 S. W. 529.

95. **Nuisance**—Cesspools.—The owner of property is liable to one injured thereby if he throws upon his premises decaying meats and vegetables or maintains cesspools from which offensive and unhealthful odors arise.—Cumber-

land Grocery Co. v. Baugh's Adm'r, Ky., 152 S. W. 565.

96. **Officers**—Personal Liability.—A public officer is liable to one injured from his failure to perform a ministerial duty.—Gutschenritter v. Whitmore, Iowa, 139 N. W. 567.

97. **Parent and Child**—Negligence.—In an action by the father to recover for loss of services of his child, due to defendant's negligence, his contributory negligence or that of the person to whom he has intrusted the child will be a complete defense.—Berger v. Charleston Consol. Ry., Gas & Electric Co., S. Car., 76 S. E. 1096.

98. **Partnership**—Agency.—Embraced within the power of members of a dissolving partnership is the authority to compromise a claim, and if such claim be compromised by one of the partners in good faith, the other partners will be bound.—W. M. Scott Co. v. Atlanta Wood & Iron Novelty Works, Ga., 76 S. E. 1082.

99.——Interest in.—A partner's right in the firm property is in effect a right to share in the surplus after discharging the firm debts, including reimbursements for advancements in excess of his proportional share.—Snerk v. First Nat. Bank, Tex., 152 S. W. 832.

100. **Payment**—Involuntary.—A payment of an indebtedness by the sale of mortgaged real property is an "involuntary payment," as to which the debtor has no right to make an application, under the rules governing voluntary payments.—Blair v. Teel, Tex., 152 S. W. 878.

101. **Perpetuities**—Suspension of Alienation.—An agreement between owners of real estate that none of them would bring an action for partition without the consent of the others does not suspend the power of alienation, and hence is a good defense to an action to partition.—Buschmann v. McDermott, 139 N. Y. Supp. 314.

102. **Principal and Surety**—Discharge.—A surety on a note payable to a bank is not discharged because the bank fails to exercise its privilege of appropriating to the payment of the note a deposit to the credit of the principal in its possession.—National Bank of Commerce v. Gilvin, Tex., 152 S. W. 652.

103. **Receivers**—Duty of.—It is no duty of a receiver or court to establish a new corporation to avoid the expense of a receivership, and the receiver should not receive compensation for endeavors in that direction.—Deputy v. Delmar Lumber Mfg. Co., Del., 85 Atl. 669.

104. **Sales**—Estoppel.—Where a seller on the refusal of the buyer to receive the goods shipped directed an agent to sell them for the best price obtainable, and the agent sold them to the buyer at less than contract price, the seller was not estopped from recovering damages for the buyer's breach.—New Blue Grass Canning Co. v. Dougan & Hollis, Ky., 152 S. W. 566.

105.——Manufactured Article.—A seller is entitled to substantial damages for the purchaser's breach of contract where the goods sold are to be specially manufactured and have no general and certain market, but not where the goods have a recognized market, and the market price at all times after the breach is higher than the contract price.—Thomas Gordon Malting Co. v. Bartels Brewing Co., N. Y. 100 N. E. 461.

106. **Searches and Seizures**—Books and Papers.—Subpoena duces tecum calling for production before a grand jury investigating alleged criminal conduct of former officers of corporation of all books, letters, etc., covering a specified period in their possession, is not an unreasonable search or seizure.—Wheeler v. United States, 33 Sup. Ct. Rep. 158.

107.——Books and Papers.—Enforced production before the grand jury of books and papers of a defunct corporation in possession of a former stockholder who claims title is not a violation of the constitutional protection against unreasonable searches and seizures.—Grant v. United States, 33 Sup. Ct. Rep. 190.

108. **Specific Performance**—Public Policy.—That a negress suing for the specific performance of a contract by a white man to convey land to her in consideration of personal services as housekeeper bore children to him does not alone discredit the contract or avoid it.—McQuitty v. Wilhite, Mo., 152 S. W. 598.

109. **Subrogation**—Equity.—Before subrogation can be decreed, the facts from which it arises must be distinctly and appropriately alleged and shown and the equity therefrom must plainly appear.—Sherk v. First Nat. Bank, Tex., 152 S. W. 832.

110. **Telegraphs and Telephones**—Forged Message.—A telegraph company is liable to one injured by a forged message, received under circumstances reasonably calculated to excite suspicion and forwarded without warning to the addressee, who relies thereon to his injury.—Citizens' Nat. Bank of Des Moines v. Western Union Telegraph Co., Iowa, 139 N. W. 552.

111.——Free Delivery Limits.—A telegraph company, after receiving a message by telephone according to its custom, cannot rely on conditions in its printed forms requiring extra charges where sendee lives beyond the free delivery limits.—Western Union Telegraph Co. v. Parham, Tex., 152 S. W. 819.

112. **Theaters and Shows**—Animals Ferae Naturae.—A boy who in a museum gave peanuts to a monkey running at large, and, on picking up one it had dropped, was bitten by it, was not voluntarily responsible for the attack, so as to relieve the keeper from liability within the rule as to keeping animals ferae naturae.—Copley v. Wills, Tex., 152 S. W. 830.

113. **Time**—Computation.—Where the property was consumed by fire on the morning of January 24, 1910, a 12-month limitation of the time to sue thereon expired at midnight Jan. 23, 1911.—Maxwell Bros. v. Liverpool & London & Globe Ins. Co., Ga., 76 S. E. 1036.

114. **Trover and Conversion**—Burden of Proof.—In action for conversion of personalty, plaintiff must show title, possession in defendant, and a refusal to surrender, or an actual conversion before suit brought.—Atlantic Coast Line R. Co. v. McRee, Ga., 76 S. E. 1057.

115. **Trusts**—Trusteeship.—Where a wife by her husband's will became trustee of the estate wieh power to sell, as well as executrix, her subsequent marriage did not ipso facto terminate such power of sale, whatever the effect of the marriage on her relation as executrix.—Holman v. Houston Oil Co. of Texas, Tex., 152 S. W. 885.

116.——Trustee's Indemnity.—A trustee's right to reimbursement for reasonable expenses for attorney's fees rests upon the fact of his personal liability to the attorney and not upon any right of subrogation.—Denvir v. Park, Mo., 152 S. W. 604.

117. **Vendor and Purchaser**—Notice.—In determining whether one is a purchaser for value without notice, anything which will put the purchaser on inquiry is notice of everything to which such attention or inquiry might reasonably lead.—Baldwin v. Anderson, Miss., 60 So. 578.

118.——Rescission.—There can be no rescission of a contract for the sale of land, unless the vendors notified the holder of the bond for title of their purpose to rescind and tendered the amount previously paid.—Buck v. Duvall, Ga., 76 S. E. 1053.

119. **Waters and Water Courses**—Riparian Owner.—Grants by the United States of land adjoining an unnavigable lake did not convey the land under water, where under the state law riparian owners take title only to the water's edge.—Marshall Dental Mfg. Co. v. State of Iowa, 33 Sup. Ct. Rep. 168.

120. **Wills**—Lucid Interval.—Altnough an insane person, or one who was at times deprived of reason by illness, may, in a lucid interval, make a will, the burden is on those upholding such a will to show that it was made in such lucid interval.—In re Schmidt's Will, 139 N. Y. Supp. 464.

121.——Punctuation.—A semicolon in a will will be construed as a comma to avoid importing to testator an unreasonable and unnatural intention, where the effect is to make the will reasonable and clear.—In re Rau's Estate, 139 N. Y. Supp. 525.

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